

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Cr. Appeal No. 20/2017

In

Cr. PLA No. 35/2017.

National Accountability Bureau

Petitioner.

Versus

Muhammad Nasir

Respondent.

PRESENT:-

1. Mr. Hasnain Khursheed, Additional Prosecutor, NAB alongwith Mr. Amin Khan, Special Prosecutor NAB and Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Asadullah Khan Advocate on behalf of the respondent.

DATE OF HEARING: - 25.09.2017.

DATE OF DETAIL ORDER:- 26.01.2018.

ORDER.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Appeal has arisen out of the impugned order dated 21.06.2017 passed by the learned Chief Court whereby the Writ Petition No. 124/2017 filed by the respondent was allowed by granting him bail on the ground of non-compliance of the directives of this court subject to furnishing of bail bonds in the sum of Rs. 10, 00,000/- (rupees ten lac only) with two sureties each in the like amount to the satisfaction of Judge Accountability Court Gilgit. The petitioner being aggrieved by and dissatisfied with the impugned order filed this petition for leave to appeal. This court vide order dated

08.09.2017 issued notice to the respondent the case was heard on 25.09.2017.

2. Briefly, the facts of the case are that the respondent during his posting as Director Education Department Gilgit-Baltistan appointed 296 persons as staff in excess to the sanctioned posts and also appointed 411 persons illegally, without test/interview, including appointments on abolished posts, upgraded/over age and unqualified/ineligible individuals. The respondent by such illegal appointments accumulated approximately 26.5 million and a sum of 17.596 million was deposited in bank in shape of cash. He also purchased properties in the name of different people as benamedars. The respondent was granted bail earlier by the learned Chief Court vide order dated 08.11.2016 which was called in question before this court and upon hearing this court vide order dated 06.01.2017 allowed the appeal of the petitioner. Consequent thereto, the bail granted to the respondent by the learned Chief Court was recalled by setting aside the order dated 08.11.2016 with the directions to the learned Trial Court to conclude the trial of the case expeditiously within 06 months without being influenced any of the observations made earlier either by this court or by the learned Chief Court. After expiry of six months the trial of the case could not be completed by the learned Trial Court resultantly the respondent filed Writ Petition before the learned Chief Court which upon hearing were allowed on the ground the prosecution failed to conclude the trial within six

months as directed by this court on 06.01.2017. According to the learned Chief Court, the prosecution was bound to conclude the case within a period of six months, hence, this petition for leave to appeal.

3. Mr. Hasnain Khursheed, learned Additional Prosecutor, NAB appearing on behalf of the petitioners submits that the delay in concluding the trial within a period of six months was not caused by the prosecution/NAB. The adjournments were made either by the defence counsel or due to the non-availability of the learned Presiding Officer National Accountability Court as he was indisposed off and/or the case could not proceed due to non-availability of record etc. Per learned Additional Prosecutor, the observation of the learned Chief Court regarding causing delay by the prosecution in concluding of trial was incorrect and based on misreading and non-reading of the case diaries of the learned Trial Court. He submits that the case is at the verge of conclusion and only few witnesses have to be examined. He further submits that since the respondent is involved in huge corruption and corrupt practices, therefore, their release on bail at this stage would amount to add premium to their credit and this will encourage the respondent and other likeminded criminals. He submits that the learned Chief Court fell in error while accepting the Writ Petitions of the respondent and passing the impugned common order, therefore, the same is not tenable.

4. On the other hand, the learned counsel for the respondent supports the impugned order passed by the learned Chief Court. He contends that the directions of this apex court vide order dated 06.01.2017 have not been complied with and the trial of the case has yet not been concluded despite lapse of more than 06 months. Per learned counsel, only 07 prosecution witnesses (PWs) out of 29 PWs have so far been examined and the early trial of the case is not insight. He submits that it is evident from various order sheets of the learned Trial Court that the delay in conclusion of trial is not on the part of respondent and the prosecution was deliberately using delay tactics. He further submits that beside the clear cut directions of this apex court, the trial has not been concluded. The mandatory provisions of Section 16 of NAB Ordinance, 1999 have also been violated according to which the prosecution is bound to conclude the trial within 30 days after submitting of reference/challan. He submits that the learned Chief Court has rightly accepted the Writ Petition filed by the respondent. He prays that the impugned order may pleased be maintained in circumstances.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order. We have also perused the order sheets/case diaries of the learned Trial Court. The perusal of the said order sheets transpires that the delay in concluding the trial was not caused by the prosecution rather the adjournments have been

made/sought either due to non-presence of the defence counsels or due to non-availability of the learned Judge, NAB Court. in our considered view, the prosecution cannot be held responsible for the said delay in concluding the trial within the stipulated time. The learned Chief Court fell in error while observing that the delay was caused in concluding the trial by the National Accountability Bureau authorities.

6. In view of the above discussions, this Criminal Petition for leave to appeal was converted into an appeal and the same was allowed vide our short order dated 25.09.2017. Consequently, the impugned order dated 21.06.2017 passed in Writ Petition NO.124/2017 by the learned Chief Court was set aside. The bail granted to the respondent namely Muhammad Nasir son of Bobulo was hereby cancelled. These were the reasons of our said short order.

7. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?